

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRANCH BANKING AND TRUST
COMPANY, a North Carolina corporation,

Plaintiff,

v.

27TH & SOUTHERN HOLDING, LLC, a
Nevada limited liability corporation, YOEL
INY; NOAM SCHWARTZ; YOEL INY,
Trustee of the Y&T INY FAMILY TRUST
dated June 8, 1994; NOAM SCHWARTZ,
Trustee of the NOAM SCHWARTZ TRUST
dated August 19, 1999; D.M.S.I., LLC, a
Nevada limited liability company; and DOES
1 through 10, inclusive,

Defendants.

2:12-CV-01781-LRH-PAL

ORDER

This is a foreclosure case. Before the court is defendants 27th & Southern Holding, LLC, Yoel Iny (individually and as trustee of the Y&T Iny Family Trust), Noam Schwartz (individually and as trustee of the Noam Schwartz Trust), and D.M.S.I., LLC's ("Defendants") motion to stay proceedings (#7¹). Defendants have also filed a motion to shorten time with respect to the motion to stay (#8).

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¹ Refers to court's docket entry number.

1 Plaintiff Branch Banking and Trust Company (“BB&T”) bought Defendants’ mortgage
2 from the Federal Deposit Insurance Corporation in August 2009. After foreclosing on Defendants’
3 property, BB&T initiated this action for a deficiency judgment in October 2012.

4 In 2011, the Nevada legislature passed AB 273, a bill limiting the amount of deficiency
5 judgments (among other things). Nevada state courts have issued conflicting rulings on whether AB
6 273 applies retroactively. *Compare BB&T v. Nielsen*, A-09-602382-C (Dist. Ct. Nev. Feb. 12,
7 2012) with *CML-NV Sandpointe, LLC v. Sandpointe Apartments, LLC*, A-11-644055-B (Dist. Ct.
8 Nev. Oct. 24, 2011). In particular, these courts have disagreed as to whether the limitation on
9 deficiency judgments applies to contracts entered before June 10, 2011. *See Sandpointe*, A-11-
10 644055-B at *p. 7. The Nevada state cases are currently on appeal to the Nevada Supreme Court.
11 *See BB&T v. Nielsen*, 60256 (Nev. 2012); *Sandpointe Apartments, LLC v. District Court*, 59507
12 (Nev. 2012). And the Nevada Supreme Court has stayed similar cases pending the resolution of
13 these appeals. *See, e.g., BH Family Partners Sunset Pad v. Dist. Ct.*, 61123 (Nev. Aug. 7, 2012).

14 In part based on these stays, Defendants now move for a stay in the instant case. Defendants
15 also base their request for a stay on the similarity of legal issues here and in the pending Nevada
16 appeals, as well as on the lack of prejudice to BB&T.

17 A district court’s discretion to control its own docket—including through the issuance of
18 stays—is broad, but not unlimited. *See Landis v. North American Co.*, 299 U.S. 248, 254 (1936). A
19 court must balance the competing interests affected by a stay, including the “hardship or inequity
20 which a party may suffer in being required to go forward.” *Lockyer v. State of California*, 398 F.3d
21 1098, 1110 (9th Cir. 2005). Moreover, a court should not grant a stay pending the resolution of
22 other proceedings “unless it appears likely the other proceedings will be concluded within a
23 reasonable time in relation to the urgency of the claims presented to the court.” *Id.* at 1111. Nor
24 should a court grant a stay absent a showing of hardship if “there is even a fair possibility that the
25 stay . . . will work damage to someone else.” *Dependable Highway Express, Inc. v. Navigators*
26 *Insurance Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

1 Here, a stay is warranted. First, the legal issues in both the state appeals and the present case
2 are similar. The resolution of the state appeals will set the law this court, sitting in diversity
3 jurisdiction, is bound to apply. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938). A stay
4 therefore avoids the possibility of piecemeal litigation and inconsistent outcomes. *See Colorado*
5 *River Water Conservation District v. United States*, 424 U.S. 800 (1976) (noting that “on
6 considerations of wise judicial administration, giving regard to conservation of judicial resources
7 and comprehensive disposition of litigation,” a federal court may stay proceedings in front of it
8 pending resolution of a state case). And “[a] trial court may, with propriety, find it is efficient for
9 its own docket and the fairest course for the parties to enter a stay of an action before it, pending
10 resolution of independent proceedings which bear upon the case.” *Pate v. DePuy Orthopaedics,*
11 *Inc.*, 2012 WL 3532780 at *2 (D. Nev. Aug. 14, 2012) (quoting *Leyva v. Certified Grocers of*
12 *California, Ltd.*, 593 F.2d 857, 863 (9th Cir.1979)).

13 Second, Defendants have adequately demonstrated that BB&T will not suffer “hardship or
14 inequity” as a result of a stay. BB&T owns “hundreds of Nevada-based mortgage-backed
15 commercial loans” and is engaged in more than a dozen different Nevada foreclosure cases.
16 (Defendants’ Mot. for Stay #7, Ex. C at p. 4:17-18.) Indeed, BB&T is a party to one of the Nevada
17 state appeals, and it has filed an amicus brief in another. (*See id.* at Ex. C, pp. 3-5.) BB&T’s
18 evident interest in a settled and consistent interpretation of AB 273’s meaning weighs in favor of a
19 stay pending such an interpretation.

20 Third, the Nevada state appeals are likely to be “concluded within a reasonable time.” *See*
21 *Lockyer*, 398 F.3d at 1111. The Nevada Supreme Court has already heard oral argument in these
22 cases. *See Nevada Supreme Court, Oral Argument Synopsis* (Oct. 1, 2012), *online at*
23 [http://www.nevadajudiciary.us/index.php/oralarguments/1654-monday-october-1-2012-las-vegas-](http://www.nevadajudiciary.us/index.php/oralarguments/1654-monday-october-1-2012-las-vegas-full-court)
24 [full-court](http://www.nevadajudiciary.us/index.php/oralarguments/1654-monday-october-1-2012-las-vegas-full-court). And the Nevada Supreme Court’s willingness to issue stays in similar cases suggests that
25 the Court expects to resolve these appeals soon. A stay is therefore warranted.

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1 IT IS THEREFORE ORDERED that Defendants' Motion to Stay Proceedings (#7) is
2 GRANTED. This action is hereby STAYED pending the resolution of proceedings in state court.
3 Defendants shall file a notice to the court of the Nevada Supreme Court's decision and a motion to
4 lift the stay within ten (10) days of the Nevada Supreme Court's decision.

5 IT IS FURTHER ORDERED that Defendants' Application for Order Shortening Time for
6 Defendants' Motion to Stay Proceedings (#8) is DENIED as moot.

7 IT IS SO ORDERED.

8 DATED this 13th day of December, 2012.



11 LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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